

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTHONY AMAKER,

Plaintiff,

v.

BRIAN S. FISCHER, et al.,

Defendants.

DECISION AND ORDER
10-CV-0977A

The above-referenced case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1)(B). On August 27, 2014, Magistrate Judge Schroeder filed a Report and Recommendation (Dkt. No. 60), recommending that the defendants' motion to dismiss the plaintiff's amended complaint for failure to state a cause of action (Dkt. No. 32) be granted in part.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the defendants' motion to dismiss (Dkt. No. 32) is granted with respect to plaintiff's claims against defendants in their official capacities, excluding injunctive relief against Commissioner Fischer and Deputy Commissioner LeClaire, and is also granted with respect to the plaintiff's claims against Commissioner Fischer, NYSDOCS Deputy Commissioner LeClaire, Attica Superintendent Bradt, C.O. Cartwright, C.O. Klodzinski,

C.O. Buth, Captain Brown, Sgt. Cunningham, Sgt. Leonard, C.O. Hendzel, Nurse Sharpe and Nurse Cygren in their individual capacities. It is further ordered that the defendants' motion to dismiss (Dkt. No. 32) is granted except with respect to the following claims as set forth by the plaintiff:

- (1) denial of attendance at religious services against Deputy Superintendent Dolce and Captain Robinson;
- (2) retaliatory cell search on September 1, 2011 against C.O. Steck;
- (3) retaliatory denial of water and breakfast on November 1, 2011 against C.O. LaCapriuccia;
- (4) retaliatory cell search on November 11, 2011 against Sgt. Erhardt; C.O. Malik; and C.O. Carney;
- (5) retaliatory denial of electricity on November 17, 2011 against C.O. Malik;
- (6) denial of meals on November 29, 2010 against C.O. Piadlo;
- (7) denial of sufficient access to the law library against Deputy Superintendent Dolce and C.O. Adamy;
- (8) expungement of false information in plaintiff's prison file regarding his risk of escape against Deputy Superintendent Chappius and C.O. O'Connors; and
- (9) denial of due process in disciplinary hearing against Captain Robinson.

The case is referred back to Magistrate Judge Schroeder for further proceedings.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: September 24, 2014